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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

VIJENDRA V. KUMAR,

Plaintiff and Respondent,

v.

MAHENDRA B. KUMAR,

Defendant and Appellant.

B237646

(Los Angeles County
Super. Ct. No. SC106535)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gerald Rosenberg, Judge. Affirmed

Mahendra B. Kumar, in pro. per. for Defendant and Appellant.

Parker, Milliken, Clark, O'Hara & Samuelian and Brent G. Cheney, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Mahendra B. Kumar, appeals from an October 5, 2011 judgment pursuant to settlement under Code of Civil Procedure section 664.6.¹ Defendant orally agreed to settle the case with plaintiff, Vijendra V. Kumar, on record before the trial court. Accordingly, we affirm the judgment.

II. BACKGROUND

A. Events Occurring Prior To The Settlement

On January 22, 2010, plaintiff filed a lawsuit against defendant and The Mahendra Family Limited Partnership. A court trial commenced on August 16, 2011. At trial, The Mahendra Family Limited Partnership was represented by counsel while defendant appeared in pro se.

Plaintiff is a signatory to a family partnership agreement entitled, “The Code of Ethics of the Individual in the Tiger Family” dated December 25, 1974. The other signatories are plaintiff’s father, Shew Jittu, and brothers, David Shander, Diren Kumar and defendant.² Their two adopted brothers, John and James Sittu, did not sign the agreement. Article 7 of the family partnership agreement provides, “A member may contribute any amount of money he’s willing and capable of.” Article 9 of the agreement states, “Each member shall be entitled to equal share regardless of the amount of individual contributions made.” Article 10 of the agreement provides: “If a member decides to terminate his interest in the family, then he shall only receive his total contribution at the family’s convenience. He shall not be entitled to any share of the

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

² For clarity’s sake and not out of disrespect, we refer to Shew Jittu and Diren Kumar by their first names.

profit.” Article 12 of the agreement states, “In case of death of a member, the beneficiary shall receive only the sum contributed by that member, but no share of the profit or interest.”

Defendant testified the first property contributed to the family partnership was an apartment building located in Pomona (the Pomona property). The Pomona property was initially acquired by Diren. Diren passed away in 1996. Prior to his death, Diren signed quitclaim deeds to defendant and their mother, Bella Jittu, dated July 10, 1995. Ms. Jittu subsequently signed quitclaim deeds to defendant and plaintiff dated July 10, 1996. None of the quitclaim deeds were recorded. However, in argument before the trial court, defendant asserted he owned the Pomona property. Plaintiff argued he had an interest in the Pomona property because the parcel belonged to the family partnership and he declared rental income from the property on his income tax returns. Defendant provided plaintiff with information on the Pomona property’s rental income and maintenance costs.

The family partnership also acquired three other real property parcels. The family partnership owned: a house located on South Genesee Avenue in the City of Los Angeles (the Genesee property); an apartment building located in Santa Monica (the Santa Monica property), and a nightclub located on Washington Boulevard in the City of Los Angeles (the Washington Boulevard property). Defendant testified he and his family occupied six units of the seven-unit apartment complex in Santa Monica. He and his family have never paid rent on the six units.

Relying on Articles 10 and 12 of the family partnership agreement, defendant argued he owned the Pomona, Genesee and Santa Monica properties because he was the only one left in the family partnership. Three members of the family partnership--Mr. Shander, Shew and Diren--had passed away. Defendant testified plaintiff withdrew from the family partnership on November 18, 1985. This occurred after plaintiff moved to northern California to set up his dental practice. Defendant stated, plaintiff signed three quitclaim deeds, one deed to Mr. Shander and two to Diren. Further, plaintiff said he was leaving the family partnership. Defendant testified plaintiff did not want involvement

with the family partnership's nightclub because it was a high-risk business. The quitclaim deed from plaintiff to Mr. Shander was for the Genesee property. The two quitclaim deeds from plaintiff to Diren were for the Washington Boulevard and Santa Monica properties. Defendant testified plaintiff did not contribute any money to the family partnership after 1985. Defendant admitted plaintiff's contributions to the family partnership were not returned to plaintiff.

As noted, defendant argued plaintiff withdrew from the family partnership in 1985. But, defendant admitted paying plaintiff \$10,000 in 1989. Plaintiff received another \$70,000 from Diren in 1989. This occurred when Diren refinanced a family partnership property located on Delaware Avenue in Santa Monica. Plaintiff testified he paid back the \$70,000 loan. In addition, in 2004, the City of Los Angeles paid plaintiff \$163,800 in connection with the eminent domain proceedings for the Washington Boulevard property. The check was issued to both plaintiff and a lawyer and placed into that attorney's account. Plaintiff never received the money because the attorney disappeared with the funds.

After hearing testimony from the parties on the first day of trial, the trial court shared its tentative thinking of the case. The trial court said the "family was very free about issuing quitclaim deeds" that were never recorded. The trial court stated it did not believe "there has been an expression made by plaintiff in this case to withdraw from the family" enterprise. The trial court also questioned why plaintiff was offered \$163,800 from the Washington Boulevard property escrow if he had supposedly left the family partnership on November 18, 1985. In addition, the trial court noted defendant's e-mails to plaintiff discussed the purchase and sale of various real property. The trial court expressed the tentative view that defendant was not entitled to all of the family partnership's assets.

B. The Settlement

The next day, on August 17, 2011, the parties informed the trial court they had reached a settlement. The parties to the agreement included six family members: plaintiff; defendant; their sister, Vijay Pal; their adopted brothers, the Sittus; and Veena Shankar. Before the terms of the settlement were placed on record, the trial court swore in the interested family members. The trial court told the parties the settlement conditions would be binding. The parties agreed defendant would receive title to the Genesee and Pomona properties. Plaintiff would receive title to the Santa Monica property and split the sale proceeds from that parcel with Ms. Pal, Ms. Shankar, and the Sittus. As part of the settlement, defendant was required to: give plaintiff a \$5,000 security deposit on the Santa Monica apartment building; the deposit's purpose was to allow his family to continue living there for another six months; permit plaintiff to conduct a walk-through of the Santa Monica apartment units to document their condition; pay plaintiff's counsel \$5,000 to cover sanctions and cost of suit; and deliver all original quitclaim deeds of the Genesee, Pomona, and Santa Monica properties to plaintiff's counsel to either record or stamp "void" as necessary to effectuate the settlement. In addition, should any party be required to enforce the terms of the settlement, he or she would be entitled to attorney fees and costs. Also, the trial court would retain jurisdiction to enforce the settlement terms.

The terms of the settlement were read into the record in open court. Defendant and counsel for plaintiff and the family limited partnership agreed all the settlement terms were on record. The trial court asked the parties if they consent to the settlement. In particular, the trial court asked defendant, who was under oath, if he understood the settlement terms: "Now, you're representing yourself. Do you have any questions you want to ask me? If you're uncertain about anything, ask me now so that we can clear it up." Defendant asked to come back in two weeks after he had consulted with his family. The trial court asked defendant if he wanted to talk to his sons and told him: "Go talk to them. Sure." The parties then agreed to additional settlement terms. The additional

terms resolved defendant's questions concerning how long he and his family could stay at the Santa Monica property and who would pay for the mortgage during that period. Thereafter, the trial court asked defendant if he had any other questions. Defendant replied in the negative. The trial court inquired if the settlement was agreeable to defendant and he answered yes. The trial court again sought and received defendant's consent to the settlement as an individual and on behalf of The Mahendra Family Limited Partnership.

C. The Hearing Which Resulted In The Enforcement Of The Settlement

On August 31, 2011, the trial court held a hearing on the settlement. Plaintiff's counsel reported all interested parties had signed the settlement agreement except defendant. The trial court asked defendant whether he was going to go through with the settlement. Defendant responded, "Your honor, I need a little time to review and verify -- I agree with the principle. I need to figure out the terms." The trial court replied, "I'll give you a couple of weeks because if you don't sign off, then we're going to have a hearing because the court retained jurisdiction; and if everything is in order, then I'm going to order it."

On September 13, 2011, plaintiff filed a motion for judgment pursuant to settlement. Defendant filed no written opposition to plaintiff's motion. The Mahendra Family Limited Partnership did not oppose the motion. On October 5, 2011, the motion for judgment pursuant to the settlement was granted. At the hearing, the trial court confirmed all interested family members, other than defendant and The Mahendra Family Limited Partnership, had signed the stipulation agreeing to the terms of the settlement set forth on the record. When the trial court asked defendant if he was going to execute the settlement agreement, he replied he would not sign because he had been forced into the settlement "under duress." The trial court inquired who forced defendant to settle, and he responded: "When you said, your Honor, that you're leaning towards the plaintiff And you said that what you see is that you're going to divide it three ways, and that's

your best bet here. And, otherwise, if I didn't do anything like that, then you have to go to the probate and all that stuff and it cost a lot."

The trial court rejected defendant's duress claim: "Anything else? You spent a lot of time here talking to members of your family. There were various proposals that were being discussed. At some point, I was notified that you had reached an agreement with your brothers and sisters. Everyone came out here, and we put it on the record. And I asked you if it was agreeable to you, and your answer to me was "yes." I don't see where anybody forced you to stand up here and tell me that you had an agreement. . . ."

Subsequently, the trial court approved the settlement agreement: "I'm ordering that it now be enforced because that's something that you did in this court in conjunction with your family members, and you agreed. And I just don't believe that you were under any duress by anybody to enter into that agreement. You had plenty of time to talk to them. . . ."

On November 29, 2011, defendant filed his notice of appeal.

III. DISCUSSION

A. Standard of Review

The trial court's factual findings on a motion to enforce a settlement under section 664.6 is reviewed for substantial evidence. (*Chan v. Lund* (2010) 188 Cal.App.4th 1159, 1166; *Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360.) In instances involving questions of law, including the construction and application of the statute, the trial court's decision is subject to de novo review. (*Chan v. Lund, supra*, 188 Cal.App.4th at p. 1166; *Gauss v. GAF Corp.* (2002) 103 Cal.App.4th 1110, 1116.) Here, we apply the substantial evidence test because defendant challenges the trial court's factual findings. In doing so, we resolve all evidentiary conflicts and draw all reasonable inferences to support the trial court's finding that the parties entered into an enforceable settlement agreement. (*Osumi v. Sutton, supra*, 151 Cal.App.4th at p. 1360.)

B. Judgment Pursuant to Settlement

Section 664.6 provides: “If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.” In *Levy v. Superior Court* (1995) 10 Cal.4th 578, 585, our Supreme Court explained the statute’s purpose: “[S]ection 664.6 . . . created a summary, expedited procedure to enforce settlement agreements when certain requirements that decrease the likelihood of misunderstandings are met. Thus, the statute requires the ‘parties’ to stipulate in writing or orally before the court that they have settled the case. The litigants’ direct participation tends to ensure that the settlement is the result of their mature reflection and deliberate assent. This protects the parties against hasty and improvident settlement agreements by impressing upon them the seriousness and finality of the decision to settle, and minimizes the possibility of conflicting interpretations of the settlement.” (See *Reed v. United Teachers of Los Angeles* (2012) 208 Cal.App.4th 322, 338-339.) Section 664.6’s statutory language is satisfied as long as the parties agree to the same material terms, either orally or in writing. (*Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1428.)

Here, the trial court’s finding of a valid enforceable settlement agreement is supported by substantial evidence. Five of the seven interested parties--plaintiff, Ms. Pal, James Jittu, and defendant, individually and on behalf of The Mahendra Family Limited Partnership--agreed orally to the settlement terms in open court. At the August 17, 2011 hearing, defendant was asked twice if he had questions for the court after the settlement terms were set forth on the record. In addition, defendant was allowed time to discuss the settlement terms with his sons. And additional settlement terms were added to resolve defendant’s questions. Later, when asked if he agreed to be bound by the settlement

agreement individually and on behalf of The Mahendra Family Limited Partnership, defendant responded “yes” to both questions. Substantial evidence supports the trial court’s judgment pursuant to settlement under section 664.6.

Defendant contends he made it clear to the trial court he did not want to settle the case. He argues the judgment should be reversed because the trial court “rammed this settlement down” his throat. No evidence supports that conclusion.

The parties informed the trial court they had reached a settlement before the start of the second day of trial. The settlement terms were placed on the record in open court. Defendant and counsel for his family limited partnership confirmed all the settlement terms were on record. The trial court asked defendant if he had any questions about the settlement terms and allowed him to discuss the terms with his sons. The trial court asked defendant if he agreed to be bound by the settlement agreement as an individual and on behalf of his family limited partnership and he stated “Yes.” The trial court never engaged in undue influence, coercion, or other improper conduct. Defendant’s contrary suggestion is frivolous.

At the October 5, 2011 hearing, defendant orally sought to rescind the settlement agreement by claiming he acted under duress in agreeing to settle. Defendant suggested he settled because the trial court had indicated it found he was not entitled to all of the family partnership’s assets at the conclusion of the first day of trial. The trial court’s statement of its tentative findings after hearing the parties’ trial testimony in no way compelled defendant to settle the case. The settlement agreement was not obtained by duress or undue influence; thus, defendant has no legal basis for rescinding the settlement agreement. (See *Chan v. Lund, supra*, 188 Cal.App.4th at pp. 1173-1179 [alleged duress and undue influence by plaintiff’s attorney did not provide legal grounds for plaintiff to rescind settlement agreement].)

Defendant also argues the trial court violated his constitutional due process right because it enforced the settlement. In addition, defendant argues the trial court violated the equal protection clause of the Fourteenth Amendment because no effort was made to insure he understood the agreement. These arguments were not raised below and thus

have been forfeited. (*In re Marriage of Modnick* (1983) 33 Cal.3d 897, 913 fn.15; *Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 767; *Ochoa v. Pacific Gas & Electric Co.* (1998) 61 Cal.App.4th 1480, 1488 fn. 3.) In addition, defendant's constitutional arguments are deemed abandoned because he fails to cite to any factual or legal support for them. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699-700; *Ochoa v. Pacific Gas & Electric Co.*, *supra*, 61 Cal.App.4th at p. 1488 fn. 3.) And, defendant's constitutional arguments are frivolous.

IV. DISPOSITION

The judgment is affirmed. Plaintiff, Vijendra V. Kumar, shall recover his appeal costs from defendant, Mahendra B. Kumar.

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TURNER, P. J.

We concur:

MOSK, J.

KRIEGLER, J.